Brooklyn Borough Gas Co., 18 State Dept. Rep. (N. Y.) 70, 86; *contra, Public Service Commission* v. *Brooklyn Borough Gas Co.*, 104 Misc. 315, 171 N. Y. Supp. 937. The *dictum* in the principal case that the court will fix rates cannot be supported. *Bronx Gas & Electric Co.* v. *Public Service Commission*, 108 Misc. 180, 178 N. Y. Supp. 172; see *Bronx Gas & Electric Co.* v. *Public Service Commission*, 190 App. Div. 13, 20, 180 N. Y. Supp. 38, 44. And the ingenious decree of Judge Learned Hand in a similar situation impounding the excess above the invalid statutory maximum to be distributed retroactively according to the new rate to be fixed by the legislature depends of necessity on early legislative action. See *Consolidated Gas Co.* v. *Newton*, 267 Fed. 231, 270. The case commonly relied on by the court as laying down this narrow construction dealt with a rate which no court had found confiscatory. *People ex rel. Municipal Gas Co.* v. *Public Service Commission*, 224 N. Y. 156, 120 N. E. 132. See *Public Service Commission* v. *Brooklyn Borough Gas Co.*, 104 Misc. 315, 328, 171 N. Y. Supp. 937, 944. The more reasonable interpretation of the words of the act as fortified by its whole scheme and purpose would confer a general power of rate regulation subject to a limitation by statute. Then when the limitation is invalid as to any company the commission could still fix reasonable rates for that company under its general power. See *Bronx Gas & Electric Co.* v. *Public Service Commission*, 190 App. Div. 13, 21, 180 N. Y. Supp. 38, 45; *Matter of Brooklyn Borough Gas Co.*, 18 State Dept. Rep. (N. Y.) 70, 83.

SURETYSHIP — SURETY'S DEFENSES — ALTERATION OF SURETY'S CONTRACT BY AMENDING CAUSE OF ACTION. — The plaintiff sued X and the defendant and attached X's property. X gave a bond for the release of the attachment, on which the defendant became surety for the amount of the judgment in case plaintiff recovered "in said action." Plaintiff in fact had no cause of action against X but was the agent of the Y company which did. With X's consent the Y company assigned its claim to plaintiff. Defendant consented to the assignment "without prejudice to any rights against plaintiff." Plaintiff recovered judgment and now sues the defendant as surety on his bond. *Held*, that the defendant is released. *Michelin Tire Co.* v. *Bentel*, 193 Pac. 770 (Cal.).

It is a fundamental proposition that any material variation of a surety's obligation without his consent discharges him. This principle is applicable to sureties on a bond given to release an attachment. If the plaintiff discontinues as to certain defendants while recovering against the others, or if parties plaintiff are added or eliminated in such a way as essentially to alter the surety's liability, he is released. *Andre* v. *Fitzhugh*, 18 Mich. 93; *Furness* v. *Read*, 63 Md. 1; *Quillen* v. *Arnold*, 12 Nev. 234. And if, as in the principal case, the plaintiff substantially amends his cause of action, substituting a good for a bad one, the surety's liability ceases. *Cassidy* v. *Saline Bank*, 7 Ind. Terr. 543, 104 S. W. 829; *Wood* v. *Denny*, 7 Gray (Mass.), 540. But if the alteration is merely one of form, such as a correction of a misdescription of claim, the obligation of the surety continues binding. *Morton* v. *Shaw*, 190 Mass. 554, 77 N. E. 633; *Warren Bros.* v. *Kendrick & Roberts*, 113 Md. 603, 77 Atl. 847. Should the sureties consent to the alteration they are not discharged. *Hellman* v. *City Trust Co.*, 111 App. Div. 879, 98 N. Y. Supp. 51; *Mundy* v. *Stevens*, 61 Fed. 77. The fact that the defendant in the principal case assented to the amended action "without prejudice to any rights" tends to support the court's finding that the consent bound him only as a party in the original suit and did not prevent him from setting up the defense of alteration of his suretyship obligation.

TITLE, OWNERSHIP AND POSSESSION — CHATTELS — RIGHTS OF ADVERSE HOLDER — BANKRUPTCY. — X bought, in good faith, a stolen automobile.

Being insolvent, he transferred it to one of his creditors. *Held*, that this was an act of bankruptcy. *In re Schenderlein*, 46 Am. B. Rep. 128.

To constitute an act of bankruptcy under the section of the Act here involved, the debtor must transfer "property." See BANKRUPTCY ACT OF 1898, § 3 a (2). This is the same expression used in section 70 of the Act in specifying what is to pass to the trustee. Under this latter section money obtained by larceny passes to the trustee. *Lord* v. *Seymour*, 85 App. Div. 617, more fully reported in 83 N. Y. Supp. 88, aff'd 177 N. Y. 525, 69 N. E. 1126. Analogously, if the bankrupt has property of another in his possession, and is using it as his own, it will pass to the trustee, though subject to the rights of the third party. *In re Beal*, Fed. Cas. No. 1156; *In re Moses*, 1 Fed. 845. The principal case accords with this broad use of the term "property," and such liberality is in harmony with the policy of the Act, since disposing of any property that would otherwise pass to the trustee should constitute an act of bankruptcy. But it is here equivalent to a holding that a stolen chattel may be, at least for some purposes, the "property" of a *bona fide* purchaser from the thief. There was a period when such holders had large rights, and when the chattel was often spoken of as their property. See Y. B., 30 & 31 Edw. I. 512–514; Y. B., 8 Edw. III. 10–30. The propriety of such an expression under existing conditions has been much discussed. See James Barr Ames, "The Disseisin of Chattels," 3 HARV. L. REV. 23, 313, 337; Percy Bordwell, "Property in Chattels," 29 HARV. L. REV. 374; see *In re Wellmade Gas Mantle Co.*, 233 Fed. 250, 252.

TORTS — INTERFERENCE WITH BUSINESS OR OCCUPATION — INDUCING SALE OF JUDGMENT AS INJURY TO LAWYER CONTRACTUALLY INTERESTED IN REALIZING UPON THE JUDGMENT. — The plaintiff, a lawyer, had a contract with his client, by which he was to receive one half of all money recovered in a suit conducted for his client. Judgment was recovered in the suit, and the plaintiff brought an action to set aside certain alleged fraudulent conveyances made by the judgment debtor to the defendant. The defendant, according to the allegations, then "maliciously and to annoy and harass the plaintiff, and to deprive the plaintiff of the fruits of the litigation," induced the client to transfer the judgment to him. The court below sustained the demurrer to the complaint. *Held*, that the judgment be reversed. *Hogue* v. *Sparks*, 225 S. W. 291 (Ark.).

It is established that one who intentionally and without justification induces another to break his contract becomes liable to the person injured by the breach. *Lumley* v. *Gye*, 2 El. & Bl. 216; *Mahoney* v. *Roberts*, 86 Ark. 130, 110 S. W. 225; *Knickerbocker Ice Co. v. Gardner Diary Co.*, 107 Md. 556, 69 Atl. 405; *contra*, *Boulier Bros.* v. *Macauley*, 91 Ky. 135, 15 S. W. 60. A difficulty raised by the principal case is whether the act of the defendant, resulting in the protection of his own interest, was not justified. But malice in fact, amounting to actual spite, was admitted as the motive on demurrer. And it is recognized in many cases that an act otherwise unobjectionable may become actionable when motivated simply by the desire to injure. *Globe & Rutgers Fire Ins. Co.* v. *Firemen's Fund Ins. Co.*, 97 Miss. 148, 52 So. 454; *Dunshee* v. *Standard Oil Co.*, 152 Iowa, 618, 132 N. W. 371; see J. B. Ames, "How Far an Act May be a Tort Because of the Wrongful Motive of the Actor," 18 HARV. L. REV. 411. The objection to such a rule is the difficulty of proving motive. But this difficulty is removed when the case arises on demurrer. Moreover there is no social interest in protecting an act prompted solely by the desire, not to benefit one's self, but to injure another. Accordingly as the wrongful motive of the defendant negatived any justification for his act, the case is thus supportable. Furthermore, the plaintiff's claim might be enforceable on the theory that by his contract he had acquired in the judgment an equitable interest, which an assignment with notice could not destroy.